

shown how or why that sixty days is an insufficient time period to install the shields. Therefore, the time given to comply with the Board's order is also reasonable.

Next, Stokes contends that because the light shields have not been approved by the FAA, requiring their installation is not a "generally available mitigating step," and therefore exceeds the Board's authority. We will affirm the Board's decision if it is supported by substantial evidence and is a reasonable interpretation of its duly promulgated rules. *In re BHL Corp.*, 161 Vt. 487, 490, 641 A.2d 771, 773 (1994).

[16] It has been the Board's practice to require applicants to take generally available mitigating steps to reduce the negative aesthetic impact of a particular project. See *In re McShinsky*, 153 Vt. 586, 591-92, 572 A.2d 916, 919-20 (1990). Failure to take advantage of available alternatives may render an aesthetic impact unduly adverse. See *id.* at 592, 572 A.2d at 920. Although the Board has not defined the term "generally available mitigating step," it has applied the term broadly. See *In re Denio*, 158 Vt. at 240-41, 608 A.2d at 1172-73 (imposition of mitigating conditions, including requirement to retain open spaces and limit agricultural and forestry use, was reasonable under circumstances); *In re Quechee Lakes*, 154 Vt. at 546, 549-50, 580 A.2d at 959, 961 (removal of installed skylights, construction of visual barriers and installation of nonglare glass were reasonable mitigating steps).

[17, 18] Based on the Board's prior applications, we do not think that an alternative must be formally recognized or widely available to be generally available. Instead, we think a generally available mitigating step is one that is reasonably feasible and does not frustrate the project's purpose or Act 250's goals. We note that in some circumstances mitigating steps may be unaffordable or ineffective. In those circumstances, it is within the Board's discretion to grant or deny a permit. 10 V.S.A. § 6086(c).

[19] In this instance, we agree with the Board that neither the possibility of federal disapproval nor the novelty of the light shields renders the devices generally unavailable. Based on Stokes's representations to the Board, light shields have been manufactured, purchased and installed for use on at least one other tower. There was no suggestion that the shields posed a technological, logistical or financial impediment. Stokes's expert testified that with installed shields, the tower would comply with FAA regulations and likely receive FAA approval. The Board's conclusion that the light shields

were a generally available mitigating step is supported by the evidence.

Affirmed.

Eileen J. Kohut v. William Kohut

[663 A.2d 942]

No. 93-529

Present: Allen, C.J., Gibson, Dooley, Morse and Johnson, JJ.

Opinion Filed July 21, 1995

1. Divorce—Maintenance—Particular Cases

It was not an abuse of discretion for the trial court to award maintenance to the plaintiff-wife where plaintiff requested maintenance in writing by typing that request onto a printed form, a temporary maintenance order was in effect, and defendant had already moved to modify that maintenance order three times, and at the commencement of the final hearing, defendant, representing himself pro se, explicitly agreed with plaintiff's counsel that everything, including maintenance, was a contested issue so that defendant was on notice that maintenance was an issue.

2. Divorce—Maintenance—Generally

In order for Supreme Court to overturn a maintenance award, the party seeking reversal must show there is no reasonable basis for the family court's decision.

3. Divorce—Maintenance—Amount; Factors Considered

In determining the amount and period of time for which maintenance is to be awarded, the court must consider a number of factors, including the reasonable needs of the recipient and the standard of living established during the marriage. 15 V.S.A. § 752(b)(3).

4. Divorce—Maintenance—Particular Cases

There was a reasonable basis for the court's decision to award maintenance and findings regarding the reasonable needs of plaintiff were sufficient to support a mere \$500 a month maintenance award because plaintiff's need to resort to public assistance demonstrated an obvious lack of personal income, property, or both, thereby justifying a maintenance award under 15 V.S.A. § 752(a). 15 V.S.A. § 752(a).

5. Divorce—Maintenance—Particular Cases

Trial court did not err by failing to fashion a maintenance award based on the exact standard of living established during the marriage where the parties agreed that they lived beyond their means and were constantly borrowing money and receiving substantial assistance from defendant's parents and because it was unlikely that such a lifestyle was sustainable after the divorce. 15 V.S.A. § 752.

6. Divorce—Maintenance—Particular Cases

Where plaintiff submitted her child support guideline information she had supplied in support of the temporary award of \$600 per month, the findings that

GUIDE TO SCHEDULE B FOR COMMUNICATIONS FACILITY

INTRODUCTION:

All development applications, including those for towers and other communications facilities, are required by 10 V.S.A. §6001 to address the ten criteria of Act 250. This guide is intended to help you frame responses under the criteria.

Although towers themselves are a significant factor, roads, power lines, sheds, buildings, fences, and other equipment may also be part of the project. All features of the project must be addressed. In addition to the physical improvements and infrastructure, there are three project phases to be considered: the construction phase, the use after construction, and the reclamation or removal when the project is no longer being operated or used.

I. THE APPLICATION FORM:

The application form must be completely filled out. This two-page form is the request for a permit - everything else is supporting documentation. All landowners, tenants, and other holders of an interest in the tract or tracts must sign the application even if the communications facility is leased on a portion of a large tract. All easements, rights-of-way, and other encumbrances to the land should be described.

The project description should include all construction and all changes for which approval is required. The description is used to create a legal notice for the public.

II. THE SITE PLAN AND PROJECT DRAWINGS

Site plans should show the communications facility and all associated construction in sufficient detail to understand the project. All natural and cultural features near or impacted by the project should be shown, including septic systems, wells, streams and other bodies of water, wetlands, forests, roads, easements, buildings, etc.

Drawings should be prepared that show how the project will look, including towers, antennas, guy wires, sheds, support pads, vegetation and/or landmarks.

A USGS map or similar map is also required so that reviewers can identify the project location. This map can also be used to indicate communication coverage or service area.

Please call the district coordinator if you have any questions about what to include on the site plan and drawings.

III. SCHEDULE B

The short form schedule B is a fill-in-the-blanks form that can be used for all types of projects by addressing the relevant questions. Given the Commission's legal obligation to make positive findings, all ten criteria are relevant and should be addressed. The following is an advisory guide based on common issues that normally arise under the ten criteria. There may be other issues depending on the circumstances associated with your particular project and site.

1 AIR POLLUTION

- Describe all emissions, odors, and sources of noise.
- Describe all measures, devices, procedures that will reduce emission, noise, odor.
- Does the project meet FCC regulations including radio frequency radiation (RFR) standards? Please provide documentation.
- Address control of dust and other particulate matter.

1 (A) HEADWATERS

- Generally not applicable.

1 (B) WASTE DISPOSAL

- Generally not applicable.

1 (C) WATER CONSERVATION

- Generally not applicable.

1 (D) FLOODWAYS

- Generally not applicable.

NOTE: If your project involves these criteria, you must address them. Call coordinator if in doubt.

1 (E) STREAMS

- If there are seasonal or year-round streams near the project or access road, mark these on the site plan.
- Include naturally vegetated, undisturbed buffer strips to protect streams. A state fisheries biologist can help you determine the size and nature of buffers.

1 (F) SHORELINES

- Identify shorelines of rivers, ponds, or lakes on or adjoining the tract(s).
- Describe potential effect on shorelines and bodies of water; contact representatives of the Agency of Natural Resources if there is a chance that shorelines will be affected.
- Address buffers if there are shorelines.

1 (G) WETLANDS

- Approximate boundaries of nearby wetlands should be marked on the site plan.
- Contact a state wetlands biologist if there are wetlands on the tract.
- Describe potential impacts to wetlands from construction and use of the project.
- Address buffers if there are wetlands.

2 & 3 WATER SUPPLIES

- Generally not applicable.

4 EROSION

- Describe the area proposed for development and how vulnerable it is to potential erosion problems.
- Consider the construction or improvements to roads and power line corridors along with the telecommunications equipment, then describe proposed temporary and permanent erosion control measures.
- On a site plan show details and locations for all erosion control measures.
- Describe plans for monitoring and repairing erosion control devices.
- Address grading, seeding, and mulching. Include procedures, monitoring, and scheduling.

5 TRAFFIC

- What road leads to the project? Describe existing safety conditions of the road serving the project.
- What are the sight distances at the proposed entrance to the project? Does anything need to be done to make the sight distances adequate?
- Will the project require a town or state access permit?
- Describe traffic associated with the construction and operation of the project (construction, operation, maintenance).

6 EDUCATIONAL SERVICES

- Generally not applicable.

7 MUNICIPAL SERVICES

- Explain how the project will not create an unreasonable burden on fire, ambulance, police, highway, solid waste, and other services provided by local municipalities.

- Will emergency service providers be able to readily locate the site and get to it if necessary?
- Describe the physical security of the site, including fences, gates, anti-climbing devices, and alarms.

8 AESTHETICS

In many cases, this is the Act 250 criterion needing particular attention for communications applications. Perform a visual impact assessment (VIA) of all parts of the project, including roads, utility lines, cleared land, towers and other structures. The VIA may need to be only a few pages with drawings or it could be fairly extensive, depending on the nature of the project. In any case, it should address at least the following:

- Describe the visual appearance of the project site as it exists without the project. How exposed is the area?
- Submit drawings of all structures and proposed equipment.
- How much land will be cleared?
- Describe mass, height, signs, lights, colors, materials and all other visual aspects of the project.
- Are lights shielded?
- Can existing roads or trails be used for access?
- Can the power lines be laid on the ground, buried, or strung through the trees?
- Describe any proposed plantings.
- Consider using a USGS map to mark the areas that will have views of the project (a viewshed map).
- Is the project in an area above 2,500 feet, located in a designated scenic corridor, or in a public recreation area, or can it be seen from such areas?
- Describe the visual appearance of the site with the project. Use a photograph montage or other techniques to show how structures will appear to viewers from adjacent roads, houses, rivers, and other notable areas.
- Have there been local permit reviews or comments from applicable state agencies?
- Will the project be removed when it is no longer needed?
- Will the project allow for additional facilities, co-location and other measures that reduce multiple visual impacts?
- What agreements or terms are used to determine what can be installed on any tower?
- Would balloons or other demonstration methods help to show the potential tower location and appearance? Discuss the feasibility of models or demonstrations, or pictorial representations.
- Will the project affect historic sites, archaeologically sensitive areas, rare or irreplaceable areas?
- After you have assembled the facts for the VIA, consider using the two-part

"Quechee Analysis."

The first part of the Quechee Analysis is to determine whether or not the project is aesthetically adverse. This is done by describing the surroundings, then examining how the project "fits" into the surroundings. Color, size, viewing area, materials, and open space are some of the factors to be considered. If the project's visual impact is not in any way adverse, then the analysis is finished.

The second part of the Quechee Analysis is required if the project will have an adverse aesthetic impact. The second part helps to determine whether or not the adverse impact is undue. The project is not undue if it does not: 1) violate a clear, written community standard; 2) offend the sensibilities of the commission or board; or 3) fail to take reasonable mitigating steps. Mitigation may include (but is not limited to) visual screening, changes to dishes and other equipment, co-location of facilities, effective placement of site. If the project is not unduly adverse, the commission will be able to find it meets the requirements of this criterion. [In Re Quechee Lakes Corp., No. 3W0411-EB and No. 3W0439-EB (Nov.4, 1985)]

SUGGESTIONS FOR MITIGATION UNDER CRITERION 8 - AESTHETICS

To minimize impacts and therefore improve your chances for expedited review as a "minor" application under Environmental Board Rule 51, please consider the following siting and design features:

- Utilizing existing support structures and other non-tower structures to mount communication equipment consistent with applicable FCC radio frequency radiation (RFR) standards in effect.
- Locating tower below summit or ridgeline.
- Minimize tower height to no more than 20' above surrounding tree crown.
- Utility service should be via existing cleared right-of-way. If new service is necessary, it should be located underground or on the ground. As a last resort, new above ground poles or clearing should follow the access road. Future utility line hook-ons must be reviewed.
- Incorporate existing access ways where possible; if new access is proposed, design it with sufficient waterbars, culverts, and rock-lined ditches; minimize width and avoid visual dissection of cleared fields and lots.
- Provide security fencing, but preserve as much of the native tree and scrub cover as possible.
- Demonstrate efforts to co-locate on existing sites and/or structures.
- Siting broadcast facilities below 2,500 feet and at locations that do not impact historic sites or comprise prime agricultural soils.

8 (A) NECESSARY WILDLIFE HABITAT AND ENDANGERED SPECIES

- Does the tract contain a deer wintering yard, bear habitat, or other necessary wildlife habitat?
- Are there endangered species living on or using the tract, or that could be affected by the project?
- If there is a road or power line to the project through wildlife habitat, are there gates, user restrictions, and other measures to protect the habitat? Can service be limited during winter months or other crucial times?
- Will the habitat be managed?
- You may wish to get advance comments from a wildlife biologist if it looks like there might be critical habitat or endangered species.

9 (A) IMPACT OF GROWTH

- Is the project a precursor to growth? For example, if a new power line is built, will it spur additional construction?

9 (B & C) AGRICULTURAL AND FORESTRY SOILS

- How many acres of primary agricultural soil are on the tract?
- How many acres of secondary agricultural or forest soils are on the tract?
- Of the above, how many acres will be affected by the project?
- Describe current and proposed forestry and agricultural soil management activities for the tract.
- Describe mitigation if proposed to prevent significant reduction of agricultural or forestry potential.

9 (D & E) EARTH RESOURCES AND EXTRACTION

- Generally not applicable.

9 (F) ENERGY CONSERVATION

- Discuss energy efficiency of buildings and equipment, including heat, insulation, motors, and power supplies.

9 (G) PRIVATE UTILITIES

- Describe who will construct and maintain power lines and roads to the project, if any.
- If private power line, submit exclusivity agreement (call coordinator).

9 (H) COSTS OF SCATTERED DEVELOPMENT

- Generally not applicable.

9 (J) PUBLIC UTILITIES

- Does the project require government or public utility services such as electrical power?
- Can these services reasonably be provided?

9 (K) PUBLIC INVESTMENTS

- Adjacent public lands, highways, and bodies of water represent public investments. These and all other adjacent public investments should be listed in the Schedule B under this criterion.
- The commission must be able to find that the project will not unreasonably interfere with public use, investment, or enjoyment of adjacent public services, lands, and facilities.

9 (L) RURAL GROWTH AREAS

- Generally not applicable.

10 TOWN AND REGIONAL PLANS

- What town plans apply to the review of this project?
- What regional plans apply to the review of this project?
- What zoning ordinances, if any, apply to the project?
- Do the applicable plans address communication facilities? Co-location? Do they address visual sensitivity?
- Quote applicable sections of the plans and zoning ordinances and describe how the project meets or complies with them.
- Has the project gone through local or regional reviews?
- Do you have comments from local selectboard, town or regional commissions?

ACT 250
APPLICATION FOR
COMMUNICATIONS
FACILITY

file number _____ date received _____
[] complete [] incomplete init. _____
date completed _____
coordinator or clerk signature: 10 V.S.A. Chapter 151

.....OFFICE USE ONLY.....

Pursuant to 10 V.S.A. § 6001 et seq (Act 250), as amended, application is hereby made for construction of a communications facility.

NAMES:

1. Applicant(s) Name: _____
Address: _____
Phone: _____

Legal form: [] individual [] partnership (attach list of partners)
[] corporation: date formed _____ place formed _____
date reg. in Vt. _____ [] municipal gov't [] state gov't
Legal interest in land: [] ownership in fee simple [] lease agreement
[] contract to purchase [] other: _____

2. Landowner(s) Name: _____
Address: _____
Phone: _____

3. Leasehold Rights Owner Name: _____
Address: _____
Phone: _____

4. Deeded Rights of Way for Project Access:
Landowner(s) Names: _____
Address: _____
Phone: _____

5. Contact Person: _____
Address: _____
Phone: _____

PROJECT DESCRIPTION:

6. _____

7. Checklist of required documentation to be submitted with this application:

- [] Schedule A (cost information)
[] Project site plan or sketch.
[] Schedule B (see guide).

- ☐ Current list of names and addresses of all adjoining property owners whose fee simple ownership of property shares a property boundary with the project tract(s) or whose lands are adjacent and separated only by a river, stream, or public highway. Include names and addresses of all landowners whose lands are subject to rights of way for project access (Schedule E).
- ☐ Certificate of Service or Schedule F (statutory parties).
- ☐ Broadcast Coverage Objective, including a radio signal propagation map showing the area which the applicant proposes to cover at the tower height proposed.
- ☐ An elevation drawing showing the height and scaled appearance of any tower, antenna(s), guy wires, or buildings proposed to be constructed or installed.
- ☐ A copy of any applicable construction permits or licenses issued by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA).
- ☐ A copy of the currently adopted Town Plan and applicable Zoning Ordinances (if any).

LAND:

8. Total acres owned or controlled by applicant and landowner at project site_____.
9. Deed(s):
 (a) Project Site Grantee's Name as recorded _____
 Recorded in book(s) _____ page(s) _____
 on date(s) _____
 Town _____ County _____
- (b) Deeded Rights-of-Way Name as Recorded _____
 Recorded in book(s) _____ page(s) _____
 on date(s) _____
 Town _____ County _____

SIGNATURES:

10. I hereby swear that the information provided above or attached to this application is true and accurate to the best of my knowledge.

Signature of applicant(s):_____ Date:_____

11. I hereby authorize the processing of this application for the above project on land(s) that I own control, or have significant property interest in.

Signature of landowner(s):_____ Date:_____

DISTRIBUTION:

12. Submit the original and four copies to the District Environmental Commission.
13. Submit additional copies to the Municipality, Municipal Planning Commission, Regional Planning Commission, and to any adjoining municipalities and planning commissions.



State of Vermont

LAND USE PERMIT

AMENDMENT

CASE	#7C0467-5	<u>LAWS/REGULATIONS INVOLVED</u>
APPLICANTS	Atlantic Cellular Co., L.P. 15 Westminster Street Suite 830 Providence, RI 02903 and Vermont ETV, Inc. 88 Ethan Allen Avenue Colchester, VT 05446 and State of Vermont Department of Forests, Parks and Recreation 103 South Main Street Waterbury, VT 05676	10 V.S.A., Chapter 151 (Act 250)

District Environmental Commission #7 hereby issues Land Use Permit Amendment #7C0467-5 pursuant to the authority vested in it in 10 V.S.A., Chapter 151. This permit amendment applies to the lands identified in Book 19C, Page 22 and Book 194, Page 361 of the land records of Burke, Vermont, as the subject of a deed to State of Vermont (Darling State Forest with a lease agreement with Atlantic Cellular Company, L.P.), the "permittees as grantees". This permit amendment specifically authorizes the permittees to add one, eight foot diameter, microwave dish (at the 55 foot tower elevation) to the proposed 60 foot communications tower, eight, fourteen foot, whip antennae (at the 60 foot tower elevation) to an existing 75 foot communications tower, and the installation of communications equipment in an approved addition to the existing Vermont ETV, Inc. equipment shelter. The tower and shelter are within the existing Burke Mountain Electronic Communications Facility located on top of Burke Mountain in the Town of Burke, Vermont.

The permittees, their assigns and successors in interest, are obligated by this permit amendment to complete and maintain the project only as approved by the District Commission in accordance with the following conditions:

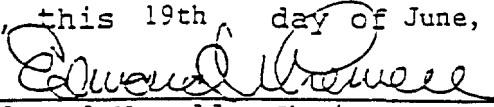
1. Except as specifically amended herein, all terms and conditions of Land Use Permit #7C0467 and subsequent amendments remain in full force and effect.

2. The project shall be completed, maintained, and operated as set forth in the Findings of Fact and Conclusions of Law #7C0467-5, in accordance with the plans and exhibits on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.
3. By acceptance of the conditions of this permit without appeal, the permittees confirm and agree for themselves and all assigns and successors in interest that the conditions of this permit shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the permittees and all assigns and successors in interest.
4. The District Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require that the permit holder file an affidavit certifying that the project is being completed in accordance with the terms of the permit.
5. By acceptance of this permit the permittees agree to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
6. The project as approved allows for the installation of telecommunications equipment at the Burke Mountain Communications Facility consisting of one, eight foot diameter, microwave dish (at the 55 foot tower elevation) to the proposed 60 foot communications tower and eight, fourteen foot, whip antennae (at the 60 foot tower elevation) to an existing 75 foot communications tower. No additional microwave dishes, height extensions, additional antennas, or additional equipment shall be installed on the towers at this facility prior to review and approval by the District Coordinator or the District Commission under applicable Environmental Board Rules.
7. The microwave dish cover shall be of a color to blend in with the existing tower infrastructure.

8. Vermont ETV, Inc. and the State of Vermont Department of Forests, Parks and Recreation shall submit a proposed approach and outline for a communications site Master Plan to the District 7 Commission no later than July 31, 1995.
9. The District Environmental Commission reserves the right to evaluate and impose reasonable additional conditions necessary to ensure no undue adverse impact with respect to Criteria 1, Air Pollution, as it relates to radio frequency radiation. The Commission reserves this right for a period of time commencing and expiring with the permit.
10. Construction activities are allowed between April 15 and September 15 only, in any given year.
11. Each prospective purchaser of this tract shall be shown a copy of the approved plot plan, and the Land Use Permit before any written contract of sale is entered into.
12. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the permittees have not commenced substantial construction in accordance with 10 V.S.A. § 6091(b) (amended June 21, 1994).
13. Pursuant to 10 V.S.A. § 6090(b) (effective June 21, 1994), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein.

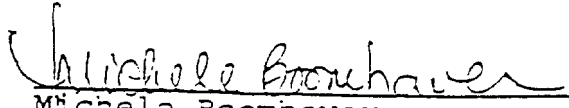
Dated at St. Johnsbury, Vermont, this 19th day of June, 1995.

BY


Edward Newell, Chairperson
District Environmental
Commission #7

Other members participating in this
decision:

Jill Broderick


Michele Bocmhower
Assistant District Coordinator

(C:\WP51\FILES\7C0467-5.ALUP)

STATE OF VERMONT
DISTRICT ENVIRONMENTAL COMMISSION #7

RE: Atlantic Cellular Co., L.P.) Application #7C0467-5
15 Westminster St.) Findings of Fact and
Suite 830) Conclusions of Law
Providence RI 02903) 10 V.S.A., Chapter 151
and) (Act 250)
Vermont ETV, Inc.)
88 Ethan Allen Avenue)
Colchester, VT 05446)
and)
State of Vermont)
Dept. of Forest, Parks,)
and Recreation)
103 South Main Street)
Waterbury, VT 05676)

INTRODUCTION TO THE FINDINGS OF FACT:

On May 8, 1995, an application for an Act 250 Permit was filed by Atlantic Cellular Co., L.P., Vermont ETV, Inc., and State of Vermont Dept. of Forest, Parks, and Recreation for a project generally described as the installation of telecommunications equipment at the Burke Mountain Communications Facility consisting of one, eight foot diameter, microwave dish (at the 55 foot tower elevation) to the proposed 60 foot communications tower, eight, fourteen foot, whip antennae (at the 60 foot tower elevation) to an existing 75 foot communications tower, and the installation of communications equipment in an approved addition to the existing Vermont ETV, Inc. equipment shelter. The project is located atop Burke Mountain in the Town of Burke, Vermont.

The tract of land consists of 1,179 acres with 0.5 acres involved in the project area. The applicant's legal interests are ownership in fee simple.

Under Act 250, projects are reviewed based on the ten criteria of 10 V.S.A., Section 6086(a)1-10. Before granting a permit, the Board or District Commission must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file identified as Exhibits 1 through 21 and the evidence received at a site visit and a hearing held on May 24, 1995.

Parties to this application are:

- (A) The Applicants by Richard Craig, Elizabeth Kohler, Esq., and Sally Greene.
- (B) The Municipality of Burke.
- (C) The Northern Vermont Development Association.
- (D) The Agency of Natural Resources.

FINDINGS OF FACT:

Prior to taking evidence with regard to the ten Criteria of 10 V.S.A., Section 6086(a), all parties agreed that the applicant through submission of the application material has met the burden of proof with respect to:

- | | | | |
|-----|---|------|---|
| 1A | Headwaters | 9A | Impact of Growth |
| 1B | Waste Disposal | 9B&C | Agricultural Soils |
| 1C | Water Conservation | 9D&E | Earth Resources |
| 1D | Floodways | 9F | Energy Conservation |
| 1E | Streams | 9G | Private Utilities |
| 1F | Shorelines | 9H | Cost of Scattered Development |
| 1G | Wetlands | 9J | Public Utilities |
| 2&3 | Water Supplies | 9K | Public Investment |
| 4 | Soil Erosion | 9L | Rural Growth Area |
| 5 | Transportation | 10 | Conformance with Local and Regional Plans |
| 6 | Educational Services | | |
| 7 | Municipal Services | | |
| 8A | Wildlife Habitat and Endangered Species | | |

Parties, therefore, waived the issuance of written findings concerning these criteria as the application shall serve as Findings of Fact.

Jurisdiction over this application is conferred by 10 V.S.A., Chapter 151 because the project is a commercial project involving more than ten acres.

The following written Findings of Fact are limited to Criteria:

- 1 Air Pollution
- 8 Aesthetics, Scenic Beauty, Historic Sites, and Natural Areas

In making the following findings, we have summarized the statutory language of the 10 Criteria of 10 V.S.A., Section 6086(a):

SECTION 6086(a)(1) AIR POLLUTION:

The Commission finds that this project will not result in undue air pollution.

1. Radio Frequency Radiation (RFR) emissions are recognized by the Communications Industry to be a potential health risk as indicated by the Federal Communications Commission's (FCC) licensing standards and adherence to the American National Standards Institutes (ANSI) guidelines with regard to RFR emissions. Testimony.
2. According to, Final Report: Survey, Investigation & Analysis of Communications Facilities on 3 Vermont Owned Mountaintops, Vermont Agency of Natural Resources, Department of Forests, Parks, and Recreation prepared by Raymond C. Trott, the Burke Mountain Communications Facility has a potential problem with the level of RFR emissions in specified locations, as measured by the ANSI/IEEE C95.1-1992 standards, which are utilized in the FCC licensing process. The study indicates that one of the areas which exceeds the established standard is located immediately outside of the State of Vermont fire tower platform. Testimony.
3. The fire tower and platform are open to the public for recreational purposes. Testimony.
4. The installation of Atlantic Cellular's communications equipment will amount to a small, but contributory, increase in the level of RFR emissions, generated through an increase in transmitter power, at the Facility (ie. the Vermont ETV television transmitter emits 25,000 watts of transmitter power, the Atlantic Cellular equipment will produce an additional 80 watts of transmitter power). Testimony.

Discussion:

The Commission has relied upon the testimony given and the material submitted regarding the issue of RFR emissions at the Burke Mountain Facility. The Commission is primarily concerned with the compatibility of the current mixed use of the Facility as a communications site and a public recreation site, as these two activities relate to the RFR emissions at the site.

While the Commission recognizes the existence of, and adherence to, FCC licensing protocols regarding RFR emissions, the Commission, in looking at the cumulative impact of RFR emission levels at the site, and is presently concerned that a health hazard may exist in specific locations. In order to ascertain that public health, safety, and welfare are being served, more information needs to be collected, and made available to the Commission. The Commission may be required to impose appropriate conditions to assure safe, continued use of the site for recreational and communications purposes.

The Commission realizes that the bulk of the burden with regard to the management of RFR emissions falls upon the land owner, the State of Vermont, and the controlling lease holder, Vermont ETV, Inc. Under the original Land Use Permit, 7C0467, Condition #3, states:

The District Environmental Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require certification that the project is being maintained in accordance with the terms of the permit.

The primary concern of the Commission is that, through a slow but steady increase in the number and type of communication towers, dishes, whip antennae, etc., key mountain top sites such as Burke could slip beyond the threshold of what is acceptable from both an aesthetic and safety standpoint under the relevant criteria. Particularly where mountain top use for communication purposes co-exists with recreational use, such as on Burke Mountain, the incremental growth in radiation generating communication equipment poses a unique threat. Another way to look at it is that such growth poses a unique planning challenge for the managers of such mountain tops. When we request a "master plan" for a mountain top, what we are primarily interested in is specific information regarding how, over the next 5 to 10 years, communications growth at the site will be managed so as not to create potential health and safety hazards to recreational users of the site and how plans will minimize negative aesthetic impacts, such that the use of the site remains in conformance with the relevant criteria.

The Commission, in light of the issue of RFR emissions, will thus seek to pursue continued conformance with Criteria 1, Air Pollution, by requiring the State of Vermont, Department of Forest, Parks, and Recreation, and Vermont ETV, Inc., to submit a Master Plan for the Facility. The co-applicants shall submit to the Commission, no later than July 31, 1995, a proposed approach and outline for addressing the following Master Plan components: the current level of compliance at the Facility with regards to the ANSI/EEE C95.1-1992 standards and the plans for development of a communications infrastructure at the Facility, with regard to RFR emissions conformance. A supplemental report to expand upon the findings produced in the Trott study of the Burke Mountain Facility may be required or another such comparable examination. The proposed approach and outline should include a time line with final Master Plan submissions to be made no later than July 31, 1996.

The Commission, through permit condition, retains the right to place further conditions upon Atlantic Cellular, Vermont ETV, Inc., and the State of Vermont, Department of Forest, Parks, and Recreation, under Criterion 1. The Commission may look to all of the contributors of RFR emissions at the Facility in determining appropriate remediation if unsafe RFR emission levels are determined to exist. Such conditions may seek to impose a financial responsibility and/or an emissions reduction to address air pollution generated by RFR emissions if such problems are identified, in the future. Cost share and emissions reductions could be determined on a pro-rated basis, by user RFR emissions output (similar to pro-rated emissions reductions required by the FCC at facilities found to be operating above the accepted standards).

SECTION 6086 (8) AESTHETICS, SCENIC BEAUTY, HISTORIC SITES AND NATURAL AREAS:

The Commission finds that the project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

1. The project will be located on two communications towers, one proposed and permitted 60 foot tower and one existing 75 foot tower, on the summit of Burke Mountain. Exhibit 6.
2. Burke Mountain has been designated a state-owned mountaintop communications site by the Vermont State Legislature (10 V.S.A. 2606a). Exhibit 10.

3. The Burke Mountain Communications Facility is currently a multi-use communications facility housing television, radio, and telecommunications transmitting and receiving equipment. Testimony.
4. The fabric which will cover the dish antennae can be painted a variety of colors to blend in with the existing surfaces and surroundings. Testimony.
5. The equipment to be installed is similar to the pre-existing equipment at the site. Exhibit 11.
6. There shall be no lighting of the telecommunications equipment located on the towers. Exhibit 11.
7. Burke Mountain possesses a paved toll road, terminating at a scenic parking area approximately 100 yards below the mountain summit, a ski area which utilizes the parking area and toll road, and a State maintained hiking trail which accesses the fire tower at the summit. Testimony.
8. The State of Vermont, Department of Forest, Parks, and Recreation Department is committed to the recreational use of the top of Burke Mountain and the surrounding 22,000 acres which are owned managed by the State of Vermont. Testimony.

Discussion:

The Commission finds the area surrounding the summit of Burke Mountain to be an active recreational site. The summit area is the ultimate destination for skiers, hikers, and other seasonal visitors. The area is seasonally accessible via the paved toll road which ascends the mountain to a scenic overlook near the ski lift terminus. A State owned and maintained hiking trail passes over the top of Burke Mountain, winding along the mountain top, and providing public access to the fire tower. The view from the tower allows visitors to take in a panoramic vista of distant areas. For the traveling public, at lower elevations, Burke Mountain can be seen to contain a mix of forest resources, commercial ski area development, and a communications facility.

The Commission finds the installation of the proposed telecommunications equipment to be consistent with the pre-existing equipment located on the summit of Burke Mountain. The type and size of the proposed equipment would not be substantially different from the pre-existing equipment. The location of the equipment at the Communications Facility will allow Atlantic Cellular to meet their technical requirements for an effective telecommunications network while not imposing an adverse or undue impact on the scenic or natural beauty of the surrounding area. The Commission will, however, condition the permit to require the covering on the microwave dish to be painted in a manner which allows it to blend in with the background. The Commission will also retain jurisdiction over the replacement of the equipment which either increases the size (including diameter) or height of the equipment.

The applicant has taken steps to avoid developing a new telecommunications site in a pristine area by selecting an existing site which the Vermont Legislature has chosen to designate as a State Communications Facility. The site is pre-existing, there is currently access to the site, the site will require no clearing of trees, the site meets the technical criteria consistent with the operation of a telecommunications network, and the installation of the size and type of equipment proposed will not be a significant increase over the pre-existing equipment. The Commission finds this approach to site selection to be consistent with retaining the aesthetic and natural beauty sought to be protected under this statute.

CONCLUSIONS OF LAW:

Based upon the foregoing Findings of Fact, it is the conclusion of this District Environmental Commission that the project described in the application referred to above, if completed and maintained in conformance with all of the terms and conditions of that application, and of Land Use Permit 7C0467-5 will not cause or result in a detriment to public health, safety or general welfare under the criteria described in 10 V.S.A., Section 6086(a).

Findings of Fact and Conclusions of Law and Order #7C0467-5
Atlantic Cellular Co., L.P./Vermont ETV/State of VT, FP&R
Page 8

COMMISSION ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law
Land Use Permit 7C0467-5 is hereby issued.

Dated at St. Johnsbury, Vermont, this 19th day of June, 1995.

By: Edward Newell
Edward Newell, Chairperson
District #7 Environmental Commission
Environmental Board

Others participating in this decision:

Jill Broderick

Michele Boomhower
Michele Boomhower
District #7 Assistant Coordinator
Environmental Board

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State of Vermont

LAND USE PERMIT

AMENDMENT

CASE	5L0759-6	<u>LAWS/REGULATIONS INVOLVED</u>
APPLICANT	Mt. Mansfield Television, Inc.	
ADDRESS	Joy Drive, P.O. Box 608	10 V.S.A., Chapter 151
	Burlington, Vermont 05402	(Act 250) and 10 V.S.A. Chapter 61
	and	Environmental Protection Rules:
	University of Vermont	Chapter 4, Public Buildings
	109 South Prospect Street	Chapter 7, Sewage Disposal
	Burlington, Vermont 05405	Chapter 21, Water Supply
		Appendix A, Design Guidelines

District 5 Environmental Commission hereby issues Land Use Permit 5L0759-6 pursuant to the authority vested in it in 10 V.S.A., Chapter 151. This permit applies to the lands previously identified in the land records of Stowe and Underhill, Vermont, as the subject of a deed to the University of Vermont. This permit specifically authorizes the permittees to construct and operate an intermittent sand filter sewerage system atop Mt. Mansfield to serve the WCAX-TV transmitter building. The project site is in the Town of Stowe, Vermont.

The permittees, their assigns and successors in interest, are obligated by this permit to complete and maintain the project only as approved by the District Commission in accordance with the following conditions:

1. The project shall be completed, maintained and operated as set forth in Findings of Fact and Conclusions of Law #5L0759-6, in accordance with the plans and exhibits on file with the District Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Commission.
2. By acceptance of the conditions of this permit without appeal, the permittees confirm and agree for themselves and all assigns and successors in interest that the conditions of this permit shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the permittees and all assigns and successors in interest. The granting of less than an undivided whole interest in this project is prohibited without prior approval of the District Commission.
3. The District Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require that the permit holders file an affidavit certifying that the project is being completed in accordance with the terms of the permit.

4. By acceptance of this permit the permittees agree to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
5. This permit hereby incorporates all of the conditions of Water Supply and Wastewater Disposal Permit #WW-5-0809-1 issued on August 26, 1996 by the Assistant Regional Engineer, Wastewater Management Division, Department of Environmental Conservation, Agency of Natural Resources. The system will be insulated in accordance with Exhibit 16.
6. The permittees shall implement the sampling and monitoring proposal described in Exhibit 15. Copies of annual reports shall be filed with the District Commission by August 1st.
7. Co-permittee University of Vermont shall devise a monitoring program for the soils and plants located down gradient of the project site and a proposal shall be filed by November 1, 1996 for District Commission review and approval. The monitoring program shall be implemented as soon as seasonably possible.
8. The permittees shall comply with all Exhibits for erosion control. Hay bale dams and silt fences shall be installed. All non-vegetated disturbed areas of the construction site shall be mulched until final vegetative cover is established. All erosion control devices shall be periodically cleaned, replaced, and maintained until vegetation is permanently established on all slopes and disturbed areas. The Commission reserves the right to schedule hearings and site inspections to review erosion control, and to evaluate and impose additional conditions with respect to erosion control, as they deem necessary.
9. All construction on this project must be completed by October 18, 1996.
10. Pursuant to 10 V.S.A. §6090(b) (effective June 21, 1994), this permit is hereby issued for an indefinite term, as long as there is compliance with the conditions herein.
11. Notwithstanding the latter date, this permit shall expire three years from date of issuance if the permittee has not demonstrated an intention to proceed with the project. In any event, substantial construction must occur within three years of the issuance date.

Land Use Permit 5L0759-6
Mt. Mansfield Television, Inc.
Page 3

12. Failure to comply with all of the above conditions may be grounds for permit revocation pursuant to 10 V.S.A., Section 6090(c).

Dated at Barre, Vermont, this 20th day of September, 1996.

BY /s/ Philip H. Zalinger, Jr.
Philip H. Zalinger, Jr., Chair
District 5 Environmental Commission

Other members participating in this decision:

Paul Poirier
Allan Heath

Any appeal of this decision must comply with all provisions of 10 V.S.A. § 6089 and Environmental Board Rule 40 including the submission of original and ten copies of the following: notice of appeal, a statement of why the appellant believes the commission was in error, a statement of the issues to be address in the appeal, a summary of the evidence that will be presented, a preliminary list of witnesses, decision and certificate of service. Decisions on minor applications may be appealed if a hearing was held by the district commission or timely requested by the appellant.